



REDEVELOPMENT AGENCY OF

THE CITY OF SAN DIEGO

RESOLUTION NUMBER 04585

DATE OF FINAL PASSAGE DEC 07 2010

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO APPROVING THE AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN MONARCH SCHOOL PROJECT PROVIDING FOR A GROUND LEASE OF A FACILITY WITH AN OPTION TO PURCHASE, THE ACQUISITION OF MONARCH'S EXISTING FACILITY BY THE AGENCY, AND LEASEBACK OF MONARCH'S EXISTING FACILITY, WHICH TOGETHER ALLOW FOR THE MOVE AND TRANSFER OF OPERATIONS OF A SCHOOL FOR DISADVANTAGED CHILDREN FROM 808 WEST CEDAR STREET TO 1625 NEWTON AVENUE IN THE EAST VILLAGE REDEVELOPMENT DISTRICT OF THE EXPANSION SUB AREA OF THE CENTRE CITY REDEVELOPMENT PROJECT

WHEREAS, the Redevelopment Agency of the City of San Diego (Agency) is engaged in activities necessary to carry out and implement the Redevelopment Plan for the Centre City Redevelopment Project (Redevelopment Plan); and

WHEREAS the Agency has adopted an Implementation Plan for the Centre City Redevelopment Project (Implementation Plan) in accordance with California Health and Safety Code section 33490, which is part of the California Community Redevelopment Law (CRL), California Health and Safety Code 33000 et seq.; and

WHEREAS, in order to carry out and implement the Redevelopment Plan, the Agency and Monarch School Project, a California non-profit corporation (Developer), entered into that certain Disposition Agreement dated December 8, 2006, filed December 12, 2006 as Agency Document No. D-04095 and R-04095 (Disposition Agreement), in which the Agency assisted

Developer in the acquisition of 808 West Cedar Street (Cedar Property) as a school facility for disadvantaged children to assist Developer in development of the Cedar Property; and

WHEREAS, the Agency and Developer now desire to enter into an Amended and Restated Disposition and Development Agreement (Amended Agreement) that amends, modifies and fully restates the terms of the Disposition Agreement; and

WHEREAS, the Amended Agreement provides for the move and transfer of operations of the school facility for disadvantaged children from the Cedar Property to 1625 Newton Avenue (Newton Property) into an existing building that Monarch will purchase, maintain and rehabilitate to provide a larger school facility for disadvantaged children as more specifically defined and provided for in the Amended Agreement; and

WHEREAS, the Amended Agreement provides for the Agency's ground leasing of the Agency-owned Newton Property to Developer for annual ground lease payments of \$300,000 for 30 years with typical rent escalations and an option to purchase the land within five years of the commencement of the lease (Ground Lease); provided, however, should Monarch exercise its option to purchase, the Agency has reserved a Right of Reverter and Right of First Refusal to Repurchase the fee interest in the Newton Property through May 11, 2043 from Monarch should Monarch face a change in circumstances in their school operations and require a sale, as more specifically set forth and provided for in the Amended Agreement and the Ground Lease by and between the Agency and Developer; the Ground Lease is Attachment No. 11 to the Amended Agreement; and

WHEREAS the Amended Agreement and the Ground Lease provide for Monarch to purchase the existing building and improvements on the Newton Property for \$1.00 and agree to maintain and rehabilitate the building and improvements located on the Newton Property as

more specifically defined and provided for in the Amended Agreement; the Agency has reviewed Basic Concept/Schematic Drawings for the phased rehabilitation of the building and improvements located on the Newton Property, which are included within Attachment No. 4 to the Amended Agreement; and

WHEREAS, the Amended Agreement provides that the Agency would reacquire the fee interest in Cedar Property from the Developer for \$1,250,000, the identical purchase price Developer paid for the Cedar Property on or about May 17, 2007 (Acquisition), subject to the terms of the Amended Agreement and the Acquisition Agreement, which is Attachment No. 8 to the Amended Agreement; and

WHEREAS, the Amended Agreement provides that following the Agency's acquisition of the fee interest in Cedar Property, the Developer would leaseback the Cedar Property from the Agency for up to one year for the amount of \$1.00 in annual rent (Leaseback) or such earlier period until the Newton Property is ready for occupancy, subject to the terms of the Amended Agreement and the Leaseback of the Cedar Property, which is Attachment No. 10 to the Amended Agreement; and

WHEREAS, the Developer has submitted to the Agency and the City Council of the City of San Diego (Council) copies of the proposed Amended Agreement in a form acceptable to the Developer; and

WHEREAS, the Board of Directors of the Centre City Development Corporation, Inc. has reviewed and discussed the proposed Amended Agreement, and has recommended that the Agency approve the Amended Agreement; and

WHEREAS, the Agency and Council held a joint public hearing to consider the approval of the Amended Agreement, which includes the Ground Lease with an option to purchase the

Newton Property, and the Acquisition and Leaseback of the Cedar Property, on November 30, 2010, in Council Chambers of the City Administration Building, at 202 "C" Street, 12<sup>th</sup> floor, San Diego, CA 92101, after publishing notice of the public hearing in accordance with CRL section 33433 and Government Code section 6066; and

WHEREAS, pursuant to CRL section 33433, the Agency prepared a summary report (Summary Report) affixed to the staff report as Attachment E and on file in the office of the Agency Secretary, and made copies of the Amended Agreement, with all attachments, including the Ground Lease with an option to purchase of the Newton Property, the Acquisition Agreement, the Leaseback of the Cedar Property and the Summary Report, available for public inspection and copying no later than the time of the first publication of the notice of the public hearing; and

WHEREAS, the Summary Report contains a summary which describes and specifies all of the following:

- (i) The Agency's cost of the Amended Agreement, Ground Lease with an option to purchase the Newton Property, and the Acquisition and Leaseback of the Cedar Property, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the Agency, plus the expected interest on any loans or bonds to finance the Amended Agreement, including the Ground Lease with an option to purchase the Newton Property, and the Acquisition and Leaseback of the Cedar Property;
- (ii) The estimated value of the interests to be leased and potentially conveyed, determined at the highest and best uses permitted under the Redevelopment Plan;
- (iii) The estimated value of the interests to be leased and potentially conveyed, determined at the use and with the conditions, covenants, and development costs required by the

Amended Agreement, the Ground Lease with an option to purchase the Newton Property, and the Acquisition and Leaseback of the Cedar Property;

(iv) The present value of the lease payments and potential purchase price which the Developer will be required to pay the Agency during the term of the Ground Lease with an option to purchase the Newton Property, along with an explanation as to why the amount is less than the fair market value of the interest to be leased and potentially conveyed, determined at the highest and best use consistent with the Redevelopment Plan; and

(v) An explanation of why the Ground Lease with an option to purchase the Newton Property, and the Acquisition and Leaseback of the Cedar Property in accordance with the Amended Agreement will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation; and

WHEREAS, pursuant to the CRL section 33433, Council considered the information in the Summary Report and has made the findings required by CRL section 33433 with respect to the Amended Agreement, the Ground Lease with an option to purchase the Newton Property, and the Acquisition and Leaseback of the Cedar Property; and

WHEREAS, the Agency acting as the designated "lead agency" for purposes of California Environmental Quality Act (CEQA) has previously certified the Final Environmental Impact Report (FEIR) for the Redevelopment Plan on March 14, 2006 (Resolution R-04001), and subsequent addenda to the FEIR certified by the Agency on August 3, 2007 (Agency Resolution R-04193) and April 21, 2010 (Agency Resolutions R-04508 and R-04510), in compliance with CEQA; and

WHEREAS, CCDC, on behalf of the Agency, has caused the preparation of an Environmental Secondary Study (ESS) dated October 2010 in accordance with CEQA and state

and local guidelines adopted pursuant thereto, which concludes, among other things, that: (i) the environmental impacts of the proposed project were adequately addressed in the FEIR, (ii) the proposed project is within the scope of the development program described in the FEIR, and (iii) no further environmental documentation is required under CEQA; and

WHEREAS, pursuant to Article II, section 1 of the Bylaws of the Agency, the City Attorney acts as General Counsel for the Agency; and

WHEREAS, effective on March 1, 2007, by Resolution Number R-04124, the Agency authorized an Agreement for Legal Services (Legal Services Agreement) with Kane, Ballmer & Berkman (Special Counsel) in which Special Counsel agrees to render legal services to the Agency under the direction of the City Attorney on an "as needed" basis; and

WHEREAS, the Agency approved the First Amendment to the Legal Services Agreement pursuant to Resolution Number R-04251 effective April 8, 2008; the Second Amendment to the Legal Services Agreement pursuant to Resolution Number R-04393 effective May 4, 2009; and the Third Amendment to the Legal Services Agreement pursuant to Resolution Number R-04483 effective March 5, 2010; and

WHEREAS, the City Attorney has determined that the City Attorney's Office has insufficient personnel to handle the Monarch School Project and that the services of Special Counsel are therefore needed; and

WHEREAS, Special Counsel has drafted the Amended Agreement, and all attachments thereto, including but not limited to the Ground Lease, the Leaseback of the Cedar Property and the Acquisition Agreement, and has approved the Amended Agreement the Ground Lease, the Leaseback of the Cedar Property, the Acquisition Agreement and all attachments thereto as to form and legality; and

WHEREAS, based on Special Counsel's legal review and approval of such contract, the City Attorney, acting as General Counsel, has drafted this Resolution; and NOW, THEREFORE,

BE IT RESOLVED, by the Redevelopment Agency of the City of San Diego, as follows:

1. That the Agency finds and determines that all recitals set forth in this resolution are true and correct and incorporated herein in full by this reference.
2. That the Agency has reviewed and approves the Summary Report.
3. That the Agency finds and determines that the consideration to be received by the Agency under the terms of the Amended Agreement, including, but not limited to the Ground Lease with purchase option, is not less than fair reuse value at the use and with covenants and conditions and development costs authorized by the Amended Agreement for, among other reasons, the reasons set forth in Sections IV, V and VII of the Summary Report.
4. That the Agency finds and determines that the ground leasing of the Newton Property in accordance with the Amended Agreement and the Ground Lease and rehabilitation of the building and improvements on the Newton Property, and the Acquisition and Leaseback of the Cedar Property in accordance with the Amended Agreement, the Acquisition Agreement and the Leaseback of the Cedar Property will assist in the elimination of blight for, among other reasons, the reasons set forth in Section VII of the Summary Report.
5. That the Agency finds and determines that the ground leasing of the Newton Property in accordance with the Amended Agreement and the Ground Lease and rehabilitation of the building and improvements on the Newton Property, and the Acquisition and Leaseback of the Cedar Property in accordance with the Amended Agreement, the Ground Lease, the Acquisition Agreement and the Leaseback of the Cedar Property is consistent with Section III of

the Implementation Plan adopted pursuant to CRL Section 33490, which specifically provides for the elimination of blight as a goal of the Implementation Plan.

6. That the Agency approves the ground leasing of the Newton Property in accordance with the Amended Agreement and the Ground Lease and rehabilitation of the building and improvements on the Newton Property, and the Acquisition and Leaseback of the Cedar Property in accordance with the Amended Agreement, the Ground Lease, the Acquisition Agreement and the Leaseback of the Cedar Property.

7. That in making the findings and recommendations herein, the Agency has considered all testimony presented at the noticed public hearing, all written evidence presented, and the entire record prepared by Agency and City staff.

8. That the Amended Agreement, which includes forms of the Ground Lease with an option to purchase, the Acquisition Agreement and the Leaseback of the Cedar Property, is approved.

9. That the Executive Director, or designee, is authorized to execute the Amended Agreement, including all implementing documents, and take any actions necessary and appropriate to implement the Amended Agreement.

10. That the Executive Director, or designee, is authorized to execute the Ground Lease, including all implementing documents, and take any actions necessary and appropriate to implement the Ground Lease, subject to all conditions set forth in the Amended Agreement.

11. That the Executive Director, or designee, is authorized to execute the Acquisition Agreement, including all implementing documents, and take any actions necessary and appropriate to implement the Acquisition Agreement.

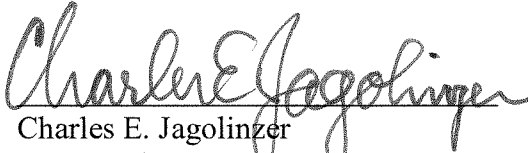


12. That the Executive Director, or designee, is authorized to execute the Leaseback of the Cedar Property, including all implementing documents, and take any actions necessary and appropriate to implement the Leaseback of the Cedar Property, subject to all conditions set forth in the Amended Agreement.

13. That the Agency approves the design of the rehabilitation of the building and improvements located on the Newton Property based upon the Basic Concept/Schematic Drawings, which are included in Attachment No. 4 to the Amended Agreement.

APPROVED: JAN I. GOLDSMITH, General Counsel

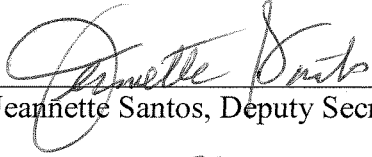
By

  
Charles E. Jagolinzer  
Deputy General Counsel

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11/15/10 Cor.Copy  
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RA-2011-47  
PL#2010-01852  
Comp. R-2011-506

I hereby certify that the foregoing Resolution was passed by the Redevelopment Agency of the City of San Diego, at this meeting of NOV 30 2010.

REDEVELOPMENT AGENCY

By   
Jeannette Santos, Deputy Secretary

Approved: 12-7-10  
(date)

  
JERRY SANDERS, Executive Director

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Executive Director

Passed by the Redevelopment Agency of The City of San Diego on NOV 30 2010, by the following vote:

| Agency Members  | Yeas                                | Nays                     | Not Present                         | Recused                  |
|-----------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|
| Sherri Lightner | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Kevin Faulconer | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Todd Gloria     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Anthony Young   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Carl DeMaio     | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Donna Frye      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Marti Emerald   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| Ben Hueso       | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |

Date of final passage DEC 07 2010

AUTHENTICATED BY:

JERRY SANDERS  
Executive Director of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
Secretary of The City of San Diego, California.

By , Deputy

Office of the Redevelopment Agency, San Diego, California

Resolution Number R- 04585